

Michael A. Harris 19/22-077
Full Name/Prisoner Number

SF-2255 - Motion to Correct Sentence

Atwater USP, P.O. Box 01900, Atwater, CA 95301
Complete Mailing Address

FILED
U.S. DISTRICT COURT
NEW MEXICO
MAR 2 2004

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Criminal Case No. 00-CR-00148-001

Civil Action No. **CIV - 04 - 0235 BB RHS**
(To be supplied by the Court)

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

Michael Anthony Harris
(Full Name)

Defendant/Movant.

**MOTION PURSUANT TO 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR
CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY**

CONVICTION UNDER ATTACK

(If movant is attacking a sentence based on a federal conviction to be served in the future, the motion should be filed in the federal court which entered the judgment.)

1. Name and location of the court which entered the judgment of conviction under attack:

United States District Court

District of New Mexico

Las Cruces, New Mexico

2. Date judgment of conviction was entered _____
3. Case number 00-CR-00148-001
4. Length and term of sentence Life imprisonment
5. Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes ☐ No ☒
6. Name of judge who imposed sentence under attack in this motion Paul J. Kelly
7. Nature of the offense involved (all counts) Possession with Intent to Distribute a Controlled Substance within 1000 feet of a School and Aiding and Abetting
8. What was your plea? (check one)
Not guilty ☒ Guilty ☐ Nolo Contendere ☐
9. If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment; give details: _____
10. If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement: _____
11. Kind of trial: (check one) Jury ☒ Judge only ☐
12. Did you testify at trial (if any)? Yes ☐ No ☒

DIRECT APPEAL

13. Did you appeal from the judgment of conviction? Yes ☒ No ☐

14. If you did appeal, answer the following:

a) State the name and location of the court where the appeal was filed, the result, the case number and the date of the court's decision (or attach a copy of the court's opinion or order): Tenth Circuit Court of Appeals, affirmed Case No. 01-2027, October 30, 2002
U.S. Sup. Ct., certiorari denied, 02-8881, March 3, 2003

b) State the issues raised: Unreasonable stop, unreasonable search, insufficient evidence, failure to give jury instruction, failure to plead and prove prior convictions.

15. If you did not appeal, explain briefly why you did not: N/A.

POST-CONVICTION PROCEEDINGS

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to the judgment under attack in this motion in any federal court? Yes ☐ No ☒

17. If your answer to question 16 was "Yes," give the following information:

a) FIRST petition, application or motion.

1) Name of court _____

2) Nature of proceeding _____

3) Claims raised _____

4) Did you receive any evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

i) Result _____

6) Date of result _____

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes ☐ No ☐ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order):

8) If you did not appeal, explain briefly why not: _____

b) As to any SECOND petition, application or motion, give the following information:

1) Name of court _____

2) Nature of proceeding _____

3) Claims raised _____

4) Did you receive any evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

5) Result _____

6) Date of result _____

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes ☐ No ☐ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order): _____

8) If you did not appeal, explain briefly why not: _____

c) As to any THIRD petition, application or motion give the following information:

1) Name of court _____

2) Nature of proceeding _____

3) Claims raised _____

4) Did you receive any evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

5) Result _____

6) Date of result _____

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes ☐ No ☐ If you did appeal, give the name of the court where

the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order): _____

8) If you did not appeal, explain briefly why not: _____

CLAIMS

18. State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims or supporting facts. You should raise in this motion all available claims for relief which relate to the conviction under attack.

CLAIM ONE: Ineffective Assistance of Counsel.

Supporting facts (tell your story briefly without citing legal authority or argument):

At the trial of my case, my attorney did not put on evidence that I was a drug addict. Judith Hansen was a substance abuse counselor who was prepared to testify that I was a crack cocaine addict at the time of my arrest and that I had previously used crack cocaine in quantities similar to that I was accused of distributing. My attorney did not present that evidence to the jury. As a result, the trial judge refused to give a simple possession jury instruction, despite the fact that there was evidence that I intended to use the cocaine, not to distribute it. The trial judge would not give the simple possession jury instruction because he said there was no evidence I used drugs. This evidence would have been presented if my attorney had Ms. Hansen testify. My attorney also advised me not to testify. If I had testified the court would have given a simple possession jury instruction.

CLAIM TWO: Improper Sentence Enhancement

Supporting facts (tell your story briefly without citing legal authority or argument):

My sentence was enhanced pursuant to 21 U.S.C. 841(b)(1)(A). The two prior
felony drug convictions alleged were a 1989 conviction for possession with
intent to distribute cocaine in the Northern District of Texas, and a 1987
conviction in Los Angeles Superior Court for possession of cocaine. The
Los Angeles conviction was a misdemeanor that was reclassified as a felony
when my probation was revoked. I was not represented by counsel, and I did
not waive my right to counsel knowingly, intelligently, or voluntarily.
This conviction is the subject of a post-conviction motion pending in
California state court.

CLAIM THREE:

Supporting facts (tell your story briefly without citing legal authority or argument):

CLAIM FOUR: _____

_____Supporting facts (tell your story briefly without citing legal authority or argument):

19. If any of the claims listed in 18 were not previously presented, state briefly what claims were not so presented, and give your reasons for not presenting them:

20. Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack?

Yes ☒ No ☐ If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding:

I have a motion pending in California state court to set aside the
conviction in Los Angeles County used to increase my sentence in this
case.

SUCCESSIVE MOTIONS

21. If you are raising a claim which you have not presented in a prior motion, have you obtained an order, from the United States Court of Appeals for the Tenth Circuit authorizing this district court to consider the motion. Yes ☐ No ☐ Please attach a copy of the order.

LEGAL REPRESENTATION

22. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Peter E. Edwards
107 E. Lohman Ave.
Las Cruces, New Mexico 88001

(b) At arraignment and plea same as above

(c) At trial same as above

(d) At sentencing same as above

(e) On appeal same as above

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

OTHER CONVICTIONS

23. Were you sentenced on more than one count of any indictment or on more than one indictment in the same court and at the same time?

Yes ☐ No ☒

24. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ☐ No ☒

- (a) If so, give name and location of court which imposed sentence to be served in the future: _____

- (b) And give date and length of sentence to be served in the future _____

- (c) Have you filed, or do you contemplate filing, any application attacking the judgment which imposed the sentence to be served in the future? Yes ☐ No ☐

Wherefore, movant prays that the court grant him such relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)


Movant's Original Signature

(Attorney's full address and
telephone number)

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the movant in the above action, that he/she has read the above pleading and that the information contained therein is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at Atwater, CA On February 26, 2004
(Location) (Date)

Michael Harris
Movant's Original Signature

I hereby certify that a copy of the foregoing pleading/document was mailed to:

United States Attorney's Office
District of New Mexico
Post Office Box 607
Albuquerque, New Mexico 87103

on this 2nd day of March, 2004.

A handwritten signature in black ink, appearing to read "D. Knoner", is written over a horizontal line.

Deron B. Knoner
Post Office Box 1190
Albuquerque, New Mexico 87103-1190
(505) 244-0021
Fax: (505) 244-1372